

THE UNITED STATES DISTRICT COURT
THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

FREDDY R. GONZALES

Plaintiff,

VS.

THE UNITED STATES OF AMERICA,

Defendant.

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CIVIL NO. SA 17 CV 1273

PLAINTIFF'S ORIGINAL COMPLAINT

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

1. Now comes, FREDDY R. GONZALES hereinafter referred to as Plaintiff in the above styled and numbered cause, complaining of the UNITED STATES OF AMERICA, hereinafter referred to as Defendant, and for cause of action would respectfully show unto the Court as follows:

JURISDICTION

2. Jurisdiction in this case is founded on the Federal Tort Claims Act, Title 28 U.S.C. §1346(b), and 28 U.S.C. §1367. The amount in controversy exceeds the sum of \$100,000.00, exclusive of interest, costs, and attorney's fees.

VENUE

3. Plaintiff, FREDDY R. GONZALES, is resident/citizens of San Antonio, Bexar County, Texas.

4. Each of the relevant acts complained of occurred in San Antonio, Bexar County, Texas, within the San Antonio Division of the United States District Court for the Western District of Texas.

ADMINISTRATIVE CLAIMS

5. Plaintiff, FREDDY R. GONZALES, has filed his original Claim for Damages with the U.S. Department of Veterans Affairs, Houston Regional Counsel, 6900 Almeda Road, Houston, Texas, 77030-4200, which was received by the Department of Veterans Affairs on June 5, 2017, more than six (6) months prior to the filing of this Original Complaint. The Department of Veterans Affairs has not denied the Plaintiff's claim; however, the investigative six (6) month period has expired as of December 6, 2017.

SERVICE

6. Service of citation may be had upon the Defendant, UNITED STATES OF AMERICA, by serving its agent, Richard L. Durbin, United States Attorney for the Western District of Texas, at his office located at 601 NW Loop 410, San Antonio, Bexar County, Texas 78216, and by sending a true and correct copy of this Complaint by Certified Mail, Return Receipt Requested/Restricted Delivery to The Honorable Jeff Sessions, Attorney General of the United States, The Department of Justice, 10th and Constitution N.W., Room B-112, Washington, D.C. 20530

AGENCY

7. The Defendant, UNITED STATES OF AMERICA, acting by and through its agents, servants and/or employees of the Department of Veterans Affairs, owns and operates the Audie L. Murphy Memorial Veterans Hospital located in San Antonio, Bexar County, Texas. Said facility provides healthcare services for persons such as FREDDY R. GONZALES.

FACTUAL BACKGROUND

8. Plaintiff, FREDDY R. GONZALES, is a 67-year-old man who was born on August 6, 1949. On or about March 21, 2017, FREDDY R. GONZALES went to the Audie L. Murphy Memorial Veterans Hospital where he was seen in the Ophthalmology Clinic. On that day, FREDDY R. GONZALES received an Avastin injection in his right eye. Immediately after the injection, FREDDY R. GONZALES felt severe pain in his right eye, and on the right side of his face. His physician, Dr. Roberto Diaz-Rohena, assured him that the pain was only temporary, and that it would subside soon. He was given antibiotic eye drops, and discharged to his home. While at home, FREDDY R. GONZALES continued to experience significant pain in his right eye, which he treated with ibuprofen. On March 23, 2017, FREDDY R. GONZALES returned to the Ophthalmology Clinic complaining of excruciating right eye pain, and a complete loss of vision in his right eye. During this visit, FREDDY R. GONZALES gave a history that his vision loss had been gradual, progressing over the previous two days. At that time, Dr. Diaz-Rohena informed him that the reason he was unable to see out of his right eye was because the Avastin previously injected into his right eye had been contaminated. Dr. Diaz-Rohena apologize for the iatrogenic injury to FREDDY R. GONZALES' right eye, and told him that the Veterans Administration was investigating the incident, and would be back in touch with him once the investigation was concluded. Dr. Diaz-Rohena admitted to FREDDY R. GONZALES that he had injected another patient with Avastin who had also experienced a complete loss of vision because of what he believed to be contaminated medication. On May 22, 2015, FREDDY R. GONZALES underwent eye surgery at the Christus Santa Rosa Ambulatory Surgery Center, but the procedure was unsuccessful in reducing his eye pain or restoring the vision to his right eye.

NEGLIGENT ACTS AND/OR OMISSIONS

9. Plaintiff, FREDDY R. GONZALES, would show that the Defendant, UNITED STATES OF AMERICA, acting by and through its agents, servants and/or employees at the Audie L. Murphy Memorial Veterans Hospital, was negligent in the healthcare and treatment of FREDDY R. GONZALES, and that such negligence was a direct and proximate cause of the injuries and damages suffered by the Plaintiff herein. Such negligent acts and/or omissions include, but are not limited to the following:

- (A) Failure to timely and correctly treat FREDDY R. GONZALES' Branch Retinal Vein occlusion.
- (B) Failure to properly and correctly administer Avastin to FREDDY R. GONZALES' right eye.
- (C) Failure to avoid injecting FREDDY R. GONZALES' right eye with contaminated medication, and
- (D) Failing to act as physicians and healthcare providers of ordinary prudence would have acted under the same or similar circumstances.

10. Each and all of the above foregoing acts of the Defendant, both of omission and commission, were negligent and constituted negligence, and each and all were a proximate cause of the injuries and damages sustained by the Plaintiff herein.

DAMAGES

11. As a result of the negligence of the physicians and staff at the Audie L. Murphy Memorial Veterans Hospital, as set out herein, Plaintiff, FREDDY R. GONZALES, has been caused to suffer physical pain, mental anguish, physical impairment, and physical disfigurement in the past, and will, in reasonable medical probability, continue to sustain these injuries in the future. Additionally, the Plaintiff has incurred reasonable medical, hospital, and therapy expenses in the past, and will, in reasonable medical probability, continue to incur these

expenses in the future. Additionally, the Plaintiff has incurred a loss of income and a loss of household services in the past, and will, in reasonable probability, continue to sustain these losses in the future. Plaintiff, FREDDY R. GONZALES, is permanently blind in his right eye and will require non-medical home care assistance for the rest of his life.

DAMAGE LIMITATIONS

12. Plaintiff believes and alleges that the damages caused by the negligent acts of omissions and/or commissions of the Defendant, have injured the Plaintiff in an amount within the jurisdictional limits of this Court.

13. WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that the Defendant herein be duly cited to appear and answer herein, and that upon final hearing of this suit, Plaintiff have and recover judgment from the Defendant, in an amount within the jurisdictional limits of this Court, together with post-judgment interest as allowed by law, plus reasonable costs of Court, and for such other and further relief, both general and special, in law and equity, to which the Plaintiff may show himself to be justly entitled.

Respectfully submitted,

THE LAW OFFICES OF JEFFREY C. ANDERSON
9601 McAllister Freeway, Suite 1250
San Antonio, Texas 78216
TEL: (210) 340-8880
FAX: (210) 340-8885
jca@texaslawfirm.com

BY: 

JEFFREY C. ANDERSON
STATE BAR NO. 01190500

ATTORNEY FOR PLAINTIFF